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Office of School Improvement
Field Services Unit

Technical Assistance Packet
Working with Private Schools

Title V, Part A – Innovative Programs

*Providing for Equitable Participation of Private School
Students, Teachers and Other Educational Personnel*

**NOTE: Title V was not funded for 2008-09. There will
be no new Title V funds allocated. Districts will
be able to use carryover and transferability
provisions of Title V for 2008-09.**

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TITLE V, Part A: Providing for Equitable Participation of Private School Students, Teachers and Other Educational Personnel

Services

Innovative Programs support education reform and innovative school improvement programs to improve school, student and teacher performance. Private school students, teachers and other education personnel may receive professional development, library materials, educational equipment, and repair and minor remodeling or construction of school facilities. Other activities may include community service programs; consumer education; purchase of computer hardware and software; programs to hire and support school nurses; school-based mental health services; programs for cardiopulmonary resuscitation training in schools; and parent and community involvement. The program has its own provisions for the equitable participation of private school students, teachers and other education personnel (section 5142).

Consultation* (as per Title V, Part A Guidance August 2002)

The Local Educational Agency (LEA) must provide Title V, Part A services to children enrolled in a private, nonprofit school within the LEA if, after consultation with private school officials, the officials of the private school indicate that they wish the children in that school to participate. The LEA must contact the private schools within the LEA annually to determine which schools wish their children to participate.

The LEA must consult with the officials of interested private schools in a timely and meaningful manner to determine the needs of the children, the types of Title V, Part A services that will be provided, and how those services will be provided. The LEA provides those services on an equitable basis to those children whether or not the services are the same Title V, Part A services the LEA provides to the public school children. The expenditures for such services, however, shall be equal (consistent with the number of children served) to Title V, Part A services provided to public school children. LEAs pay the cost of administering Title V, Part A services for public and private school students "off the top" of their allocations, before calculating how much of the Title V, Part A funds are to be made available for services for public and private school students [Section 5142(a) and (b)].

* NOTE: For the purposes of consultation, in Michigan, the LEA may be the Intermediate School District (ISD) or Regional Educational Service Agency (RESA).

Documentation

Each LEA shall maintain a written affirmation signed by officials of each participating private school that the consultation required by this section has occurred.

- Document the meeting, discussion, process and the final plan which should include:

Required Documentation

Letter of invitation to plan
Documentation of private school consultation

Suggested Documentation

Minutes of meetings
Needs assessments used by private schools
Plan for delivery of service
Program evaluation process

- LEAs may request documentation, as needed, from private school officials that can help the LEA identify services that may be appropriate to the needs of private school teachers. However, requiring a formal application may, depending upon its form and content, constitute an administrative barrier that is inconsistent with the LEA's responsibility to ensure equitable participation of private school teachers.
- To meet its general record-keeping responsibility, an LEA should document that: (a) representatives of private schools were informed of the availability of Title V, Part A services; (b) the needs of private and public school students were identified as part of a district-wide needs assessment; (c) private school officials were consulted and provided an opportunity for input into the planning of the LEA's program activities; and (d) the LEA designed program activities that would permit their equitable participation.

Allocation

- For purposes of determining the amount of Title V, Part A funds that an LEA must make available for equitable services to private school students, the LEA must calculate the total enrollment of the public school and the private school. This total is divided into the LEAs Title V, Part A allocation to generate a per pupil amount (see Title V, Part A Calculation Worksheet in appendix).
- To ensure that it is providing equitable educational services to private school students the LEA should consider ways to:
 1. Assess, address, and evaluate the needs and progress of both public and private school students;
 2. Spend an equal amount of funds per student to serve the needs of public and private school students;
 3. Offer educational services to private school students that are secular, neutral, and non-ideological [Section 5142(a)(1)(A)(i)].

Resources

- Refer to Title V General Provisions and Guidance for further information.



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Title V, Part A

Appendix



Title V, Part A Calculation of Private Schools' "Equitable Participation"

Worksheet for School Year _____

STEP 1: Determine if you are the fiscal agent for Title V services in your geographical area(s) (either the Local Educational Agency (LEA) or the Regional Educational Service Agency (RESA) service as the fiscal agent).

STEP 2: List the Private Schools located within your district's boundaries along with the enrollment of each school:

Private School	Enrollment
	Total

STEP 3: Determine the amount of the district's Title V, Part A allocation. This is the BASE.

STEP 4: Divide this BASE by the total of students enrolled in the Public School and the Private Schools to produce the "Per-Pupil" amount:

$$\frac{\text{Title V, Part A Allocation (BASE)}}{(\text{Total Private Student Enrollment} + \text{Total Public School Student Enrollment})} = \text{Per-Pupil amount}$$

- The Public School's "share" = Per-Pupil amount X Public School's Enrollment
- Each Private School's "share" = Per-Pupil amount X Private School's Enrollment



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Working with Private Schools

Title V, Part A

Resources



From Title V, Subpart 4 — General Provisions

SEC. 5142. PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS.

(a) PARTICIPATION ON EQUITABLE BASIS-

(1) IN GENERAL- To the extent consistent with the number of children in the school district of a local educational agency that is eligible to receive funds under this part, or that serves the area in which a program assisted under this part is located, who are enrolled in private nonprofit elementary schools and secondary schools, or, with respect to instructional or personnel training programs funded by the State educational agency from funds made available for State educational agency use, the local educational agency, after consultation with appropriate private school officials —

(A) shall provide, as may be necessary, for the benefit of such children in such schools —

(i) secular, neutral, and nonideological services, materials, and equipment, including the participation of the teachers of such children (and other educational personnel serving such children) in training programs; and

(ii) the repair, minor remodeling, or construction of public facilities (consistent with subsection (c)); or

(B) if such services, materials, and equipment are not feasible or necessary in one or more such private schools, as determined by the local educational agency after consultation with the appropriate private school officials, shall provide such other arrangements as will assure equitable participation of such children in the purposes and benefits of this part.

(2) OTHER PROVISIONS FOR SERVICES- If no program is carried out under paragraph (1) in the school district of a local educational agency, the State educational agency shall make arrangements, such as through contracts with nonprofit agencies or organizations, under which children in private schools in the district are provided with services and materials to the same extent as would have occurred if the local educational agency had received funds under this part.

(3) APPLICATION OF REQUIREMENTS- The requirements of this section relating to the participation of children, teachers, and other personnel serving such children shall apply to programs carried out under this part by a State educational agency or local educational agency, whether directly or through grants to, or contracts with, other public or private agencies, institutions, or organizations.

(b) EQUAL EXPENDITURES-

(1) IN GENERAL- Expenditures for programs under subsection (a) shall be equal (consistent with the number of children to be served) to expenditures for programs under this part for children enrolled in the public schools of the local educational agency.

(2) CONCENTRATED PROGRAMS- Taking into account the needs of the individual children and other factors that relate to the expenditures referred to in paragraph (1), and when funds available to a local educational agency under this part are used to concentrate programs on a particular group, attendance area, or grade or age level, children enrolled in private schools who are included within the group, attendance area, or grade or age level selected for such concentration shall, after consultation with the appropriate private school officials, be assured equitable participation in the purposes and benefits of such programs.

(c) ADMINISTRATIVE REQUIREMENTS-

(1) FUNDS AND PROPERTY- The control of funds provided under this part, and title to materials, equipment, and property repaired, remodeled, or constructed with such funds, shall be in a public agency for the uses and purposes provided in this part, and a public agency shall administer such funds and property.

(2) PROVISION OF SERVICES- Services provided under this part shall be provided by employees of a public agency or through contract by such a public agency with a person, association, agency, or corporation that, in the provision of such services, is independent of the private school and of any religious organizations, and such employment or contract shall be under the control and supervision of such a public agency. The funds provided under this part shall not be commingled with State or local funds.

(d) WAIVER-

(1) STATE PROHIBITION- If a State educational agency or local educational agency is prohibited, by reason of any provision of law, from providing for the participation in programs of children enrolled in private elementary schools and secondary schools as required by subsections (a) through (c), the Secretary shall waive such requirements for the agency involved and shall arrange for the provision of services to such children through arrangements that shall be subject to the requirements of this section.

(2) FAILURE TO COMPLY- If the Secretary determines that a State educational agency or a local educational agency has substantially failed, or is unwilling, to provide for the participation on an equitable basis of children enrolled in private elementary schools and secondary schools as required by subsections (a) through (c), the Secretary may waive such requirements and shall arrange for the provision of services to such children through arrangements that shall be subject to the requirements of this section.

(e) WITHHOLDING OF ALLOTMENT OR ALLOCATION- Pending final resolution of any investigation or complaint that could result in a waiver under subsection (d)(1) or (d)(2), the Secretary may withhold from the allotment or allocation of the affected State educational agency or local educational agency the amount estimated by the Secretary to be necessary to pay the cost of services to be provided by the Secretary under such subsection.

(f) DURATION OF DETERMINATION- Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency or local educational agency to meet the requirements of subsections (a) through (c).

(g) PAYMENT FROM STATE ALLOTMENT- When the Secretary arranges for services under subsection (d), the Secretary shall, after consultation with the appropriate public school and private school officials, pay the cost of such services, including the administrative costs of arranging for those services, from the appropriate allotment of the State educational agency under this part.

(h) REVIEW OF DETERMINATION-

(1) WRITTEN OBJECTIONS- The Secretary shall not take any final action under this section until the State educational agency and the local educational agency affected by such action have had an opportunity, for not less than 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why that action should not be taken.

(2) COURT ACTION- If a State educational agency or local educational agency is dissatisfied with the Secretary's final action after a proceeding under paragraph (1), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the action, as provided in section 2112 of title 28, United States Code.

(3) REMAND TO SECRETARY- The findings of fact by the Secretary with respect to a proceeding under paragraph (1), if supported by substantial evidence, shall be conclusive. The court, for good cause shown, may remand the case to the Secretary to take further evidence and the Secretary may make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive, if supported by substantial evidence.

(4) COURT REVIEW- Upon the filing of a petition under paragraph (2), the court shall have jurisdiction to affirm the action of the Secretary or to set such action aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

(i) PRIOR DETERMINATION- Any bypass determination by the Secretary under title VI (as such title was in effect on the day preceding the date of enactment of the *No Child Left Behind Act of 2001*) shall, to the extent consistent with the purposes of this part, apply to programs under this part.

GUIDANCE

for

Title V, Part A
of the
Elementary and Secondary Education Act,
as reauthorized by the
No Child Left Behind (NCLB) Act
(State Grants for Innovative Programs)

U.S. DEPARTMENT OF EDUCATION
WASHINGTON, DC



August 2002

PARTICIPATION OF CHILDREN ENROLLED IN PRIVATE, NONPROFIT SCHOOLS

Q-1. How may private school children receive services under Title V-A?

A-1. An LEA must provide Title V-A services to children enrolled in a private, nonprofit school within the LEA if, after consultation with private school officials, the officials of the private school indicate that they wish the children in that school to participate. The LEA must contact the private schools within the LEA annually to determine which schools wish their children to participate. The LEA must consult with the officials of interested private schools in a timely and meaningful manner to determine the needs of the children, the types of Title V-A services that will be provided, and how those services will be provided. The LEA provides those services on an equitable basis to those children whether or not the services are the same Title V-A services the LEA provides to the public school children. The expenditures for such services, however, shall be equal (consistent with the number of children served) to Title V-A services provided to public school children. LEAs pay the cost of administering Title V-A services for public and private school students “off the top” of their allocations, before calculating how much of the Title V-A funds are to be made available for services for public and private school students. *[Section 5142(a) and (b)]*.

Q-2. What administrative requirements apply regarding the provision of services to private school children?

A-2. The services, materials, and equipment that an LEA provides for the benefit of participating private school students must be secular, neutral, and nonideological. The control of Title V-A funds and the title to any equipment and materials purchased with those funds must remain in a public agency (usually the LEA). No Title V-A funds may be paid to any private school, and the title to equipment and materials may not be transferred to any private school. Title V-A services must be provided by a public agency either directly or through a contractor. Any contractor must be a person or an association, agency, or corporation who or that, in the provision of the Title V-A services, is independent of the private school and any religious organization. A public agency must supervise and have ultimate control over any contractor hired to provide Title V-A services. Finally, Title V-A services for private school students must supplement, and in no case supplant, the level of services that would be available to participating students and educational personnel in the private schools in the absence of the Title V-A funds *[Sections 5142(a)(1)(A) and (c)]*.

Q-3. How may an LEA ensure that Title V-A services are provided in a proper manner for the benefit of private school students and personnel?

A-3. LEAs should implement safeguards and procedures to ensure that Title V-A funds are used properly for private school children.

First, private school officials should be fully informed of and agree to the limitations on the use of any equipment and materials located in the private school. LEAs should obtain from the appropriate private school official a written assurance that any equipment and materials placed in the private school will be used only for secular, neutral, and nonideological

purposes; that private school personnel will be informed as to these limitations; and that the equipment and materials will supplement, and in no case supplant, the equipment and materials that, in the absence of the Title V-A program, would have been made available for the participating students.

Second, the LEA is responsible for ensuring that any equipment and materials placed in the private school are used only for proper purposes. The LEA should determine that any Title V-A materials, such as library books and computer software, are secular, neutral, and nonideological. A good benchmark for this review is that the equipment and materials would be appropriate for use in public schools. The LEA should mark all equipment and materials purchased with Title V-A funds so that they are clearly identifiable as Title V-A property of the LEA. The LEA also should maintain an up-to-date inventory of all Title V-A equipment and materials provided for the benefit of private school students. It is also a helpful practice for private schools to maintain logs to document the use of Title V-A equipment and materials located in their schools. The LEA also should perform periodic on-site monitoring of the use of the equipment and materials. The monitoring could include on-the-spot checks of the use of the equipment and materials, discussions with private school officials, and a review of any logs maintained.

Third, the LEA should designate one public school official to oversee Title V-A services for private school students and ensure that services, materials and equipment provided for these students are secular, neutral, and nonideological. The designated official also should be responsible for receiving and handling any complaints or allegations that Title V-A funds are being used for improper activities for private school students.

Finally, LEAs need to ensure that if any violations occur, they are corrected at once. An LEA must remove materials and equipment from a private school immediately if removal is needed to avoid an unauthorized use.

Q-4. May private school children and personnel receive services under any Title V-A innovative program area?

- A-4. If Title V-A funds are used to provide services for children enrolled in private, nonprofit schools, these services must primarily benefit the children, not the private schools. This means that the funds must be used to meet specific needs of students enrolled in the private schools, rather than the needs of the private schools themselves or the general needs of the students enrolled in the private schools. (See section 76.658 of the Education Department General Administrative Regulations (EDGAR)).

In working with private schools to decide what Title V-A programs and activities will be carried out for children and personnel in those schools, LEAs must ensure that the programs and activities are supplemental in nature and will meet the specific needs of the children enrolled in the schools. For example, LEAs may not use funds for class-size reduction purposes in a private school [*Section 5131(a)(1)*]. This use of funds, which would involve hiring teachers for private school classrooms, would meet the needs of the private schools themselves, as well as the general needs of the students enrolled in the

schools, rather than the specific needs of those students. However, LEAs may use funds to provide professional development activities for teachers in private schools [Section 5131(a)(2)].

There are several innovative assistance programs that, by their nature, cannot be carried out in a private school. These include (1) the planning, design, and initial implementation of charter schools [Section 5131(a)(8)]; (2) activities to promote, implement, or expand public school choice [Section 5131(a)(12)]; and (3) programs to implement the unsafe school choice policy in section 9532 [Section 5131(a)(25)].

For all other innovative assistance programs, particularly those involving education reform or school improvement activities, LEAs must evaluate closely whether the activities proposed to be carried out in a private school will primarily benefit the children enrolled in the school or the school itself. If the latter, then the LEA may not permit that activity or program to be implemented in the private school. In some instances, a program or activity that primarily benefits the private school's students (because it addresses specific, rather than general, needs of the students) will also incidentally benefit the school. The LEA may permit a program or activity of this type to be carried out in the private school. Again, under the regulations in EDGAR, the key in determining if particular services may be provided to students in a private school is whether those services will meet specific needs of students enrolled in the school, rather than their general needs or the needs of the school itself. This does not preclude an incidental benefit to the private school. However, LEAs must be careful in this determination and may not authorize any services whose purpose is to benefit the general needs of the private school or its students.

Q-5. How does an SEA calculate the amount of funds to be distributed to the LEAs?

A-5. The funds allocated to LEAs are based on the relative enrollments of the total of the number of children enrolled in public schools and the number of children enrolled in private, non-profit schools that participated in the program for the fiscal year preceding the fiscal year for which the determination is made. (See question Q-1.)

Q-6. What are the obligations of LEAs to private schools that did not participate in Title V-A programs in the preceding year?

A-6. The LEA has the obligation to contact, on an annual basis, appropriate officials from private, nonprofit schools within the LEA to determine whether such schools desire that their students participate in Title V-A programs. This must be done for schools that did and did not participate in the program during the previous year. Once a school agrees on behalf of its students to participate, the enrollment of those students is considered in the calculation of relative enrollment for the LEA for the following year. The method for calculating funds does not diminish the responsibilities of the LEA under section 5142.

F-7. What happens if an LEA chooses not to participate in the Title V-A program?

A-7. If no program is carried out in the LEA, the SEA shall make arrangements, such as through contracts with nonprofit agencies or organizations, under which children in private schools in the LEA are provided with services and materials to the same extent as would have occurred if the LEA had received funds.

Q-8. Would it be beneficial for SEAs and LEAs, in working with private school officials in implementing Title V-A, to create Non-Public School Working Groups?

A-8. Some SEAs and LEAs have created *Non-Public School Working Groups*, made up of representatives from the full spectrum of private schools, and have found that such groups facilitate consultation between public and private school officials and the effective implementation of programs and services for private school students and teachers. Such groups meet on a regular basis, and smooth the progress of Federal education program implementation for private school students and teachers.